IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3534 of 2000

Between:

M/s.A.H.Mulla Fida Ali & Sons, rep.by its

Managing Partner C.Vijayandar Reddy,

3-5-1047,Narayanaguda, Hyderabad .

..... PETITIONER

AND

1 Bharat Petroleum Corporation Limited,
Bharat Bhavan, 4 & 6 Currimbhey Road,

Ballard Estate, Mumbai.
2 Territory Manager (Retail),

Cherlapally Territory,Bharat Petroleum

Corporation Ltd., Cherlapally, Hyderabad.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in suspending the sales from the petitioner's outlet for a period of 45 days from 28-2-2000 pursuant to Ref:CT:1.01 dated 26-2-2000 of the 2nd respondent is illegal and arbitrary and consequently set aside the said orders.

Counsel for the Petitioner: MR.B.ADINARAYANA RAO

Counsel for the Respondents: MR. A. KRISHNA MURTHY.

The Court made the following :

ORDER:

This writ petition is filed seeking a declaration that the action of the Respondent in suspending the sales from the petitioner's outlet for a period of 45 days from 28-02-2000 is arbitrary and illegal.

Under an agreement dated 24-03-1994 executed between the 1st respondent Corporation and the petitioner and pursuant to a licence granted, the petitioner has been carrying on sale of petroleum products at Narayanaguda, Hyderabad. While so, the petitioner was served with the show cause notice dt.15-02-2000 stating that the Motor Spirit sample drawn from the underground tank of the petitioner during the inspection on 03-12-1999, is found to be off specifications in respect of Octane rating and calling upon the petitioner to explain as to why action should not be taken for the said failure, within seven days from the date of receipt of the notice. Thereafter, the petitioner submitted its explanation dated 26-02-2000 denying the allegation that Motor Spirit sample was off specification and requesting the first respondent to furnish a copy of the lab test so as to enable them to submit further explanation. Strangely, on the very same day i.e., on 26-02-2000, the respondent Corporation under the impugned letter dated 26.02.2000 informed the petitioner that the explanation does not give any valid or acceptable reasons for the failure alleged and suspended the sales and supply of products for a period of 45 days from 28.02.2000. Aggrieved by the same, this writ petition is filed.

I have heard the learned counsel for the petitioner as well as the learned Standing

Counsel appearing for the Corporation and perused the material on record.

The learned counsel for the petitioner while pointing out that the petitioner was never furnished the lab report as sought in the explanation dated 26-02-2000, submits that the impugned order is in violation of the principles of natural justice. It is also contended that the allegation in the show cause notice that the Motor Spirit sample was found to be off specifications in respect of Octane rating is incorrect, baseless and at any rate since the said Octane rating test has not been provided under the Marketing Discipline Guidelines, the impugned action of the Corporation is arbitrary and illegal.

In the counter affidavit filed on behalf of the Corporation, the plea of the petitioner that the petitioner was not served with a copy of the lab report has not been denied. However, the only contention raised is that the writ petition for enforcement of the terms and conditions of the non-statutory contract is not maintainable.

The learned Standing Counsel appearing for the Corporation contends that the public law remedy under Article 226 of the Constitution of India is not available to the petitioner and thus the writ petition is liable to be dismissed on that ground alone.

I am unable to agree with the objection raised by the learned Standing Counsel for the Corporation with regard to the maintainability of the writ petition. In this regard, it is relevant to note the following observations made by the Supreme Court while considering an identical issue in **HARBANSLAL SAHNIA V. INDIAN OIL CORPORATION**:

> "So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. V. Registrar of Trade Marks). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In

such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In the light of the ratio laid down in the above case, the contention raised by the learned Standing Counsel for the Corporation as to the maintainability of the writ petition is without any substance.

Coming to the merits of the case, since admittedly the report of the lab test as sought by the petitioner was not furnished, I am of the view that the impugned order is in violation of the fundamental principles of natural justice and therefore the same is liable to be dismissed on that ground alone. However, it is to be noted that along with the counter affidavit, the Corporation has filed a copy of the test report dated 27-1-2000 and the same has been served on the learned counsel for the petitioner. In the circumstances, the petitioner is granted liberty to submit appropriate explanation to the show-cause notice dated 15-12-2000 urging all the grounds including that the impugned order is not in consonance with the Marketing Discipline Guidelines within a period of four weeks from to day, in which event, the respondent Corporation shall consider the same and pass appropriate orders in accordance with Law.

Accordingly, the impugned order is set aside and the writ petition is allowed with the above directions. No costs.

_____

G.ROHINI, J

Date: 07-12-2004.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Tuesday, the Seventh day of December, Two thousand and four.

ASSISTANT REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

1 Bharat Petroleum Corporation Limited,
Bharat Bhavan, 4 & 6 Currimbhey Road,

Ballard Estate, Mumbai.

2 Territory Manager (Retail),

Cherlapally Territory,Bharat Petroleum

Corporation Ltd., Cherlapally, Hyderabad.

3. Two C.D. copies.